

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

IN RE:	:
RICHARD J. HINDIN	:
	Petition No: 09-19741-BFK
	:
	: Chapter 11
Debtor	

GUCA ENTERPRISES, LLC	:
Assignee of CHICKEN OUT THE DOOR	:
INC.	:
9314 Montpelier Drive	:
Laurel, MD 20708	:
	: Motion no:
Movant	:
vs.	:
RICHARD J. HINDIN	:
Respondent	:

MOTION FOR RELIEF FROM AUTOMATIC STAY AND OTHER RELIEF

THE MOTION of GUCA Enterprises, LLC, assignee of the Judgment Creditor, CHICKEN OUT THE DOORS, INC., by and through its Attorneys, Alice Pare and , respectfully represents as follows:

1. Jurisdiction is based on 28 U.S.C. section 1334, 28 U.S.C. section 157, 11 U.S.C. section 362; and 11 U.S.C. section 1324.
2. Movant asserts that Debtor is improperly retaining funds that belong to the Movant in his “Debtor in Possession” account, thus improperly using the DIP account to shield funds that do not belong to him.
3. That the Debtor, Richard J. Hindin, filed a Petition for relief under title 11 U.S.C. Chapter 11 on November 27, 2009.
4. Pursuant to his Chapter 11 status Debtor maintains a debtor in possession bank account with the Bank of Georgetown.

5. That the Debtor is required to deposit all of his post-petition earnings into the “debtor in possession” Bank of Georgetown account.

6. That the Debtor, post-Petition, entered into a Consulting Agreement with Chicken Out the Door, Inc.,

7. That under the Consulting Agreement the Debtor was to provide and render services to Chicken Out the Door, Inc., for which he was being compensated in the monthly amount of \$10,000.00.

8. That the total payments made to the Debtor by Chicken Out the Door, Inc., totaled \$72,115.50.

9. **That each of the payments from Chicken Out the Door, Inc. was deposited by Debtor into the Bank of Georgetown account (i.e. the DIP account).** Movant has confirmed that the Bank of Georgetown account is held by the Debtor as a Debtor in Possession account (hereinafter “DIP account”).

10. That Chicken Out the Door, Inc. ceased making payment to the Debtor contending that the Debtor had breached his obligations to Chicken Out the Door, Inc. and that Debtor failed to render services as required under the Contract.

11. Debtor filed a Complaint against Chicken Out the Door, Inc. in the Circuit Court for Montgomery County, Maryland on December 3, 2012 alleging a breach of contract on the part of Chicken Out the Door, Inc. and alleged that Chicken Out the Door, Inc. owed the Debtor money under the Consulting Agreement.

12. Chicken Out the Door, Inc. filed a Counter-Complaint also alleging breach of contract and claiming that the Debtor was not entitled to the compensation he received compensation from Chicken Out the Door, Inc..

13. A Jury trial was convened and the Jury found in favor of Chicken Out the Door, Inc. Judgment was entered in favor of Chicken Out the Door, Inc. against the Debtor in the amount of \$31,248.50 on March 24, 2014. \$31,248.50 is the dollar amount the Jury determined the Debtor had received from Chicken Out the Door, Inc. that was not earned. *See Exhibit 1.*

14. The Debtor deposited all of the monies paid under the consulting agreement into the DIP account. The Jury determined that the sum of \$31,248.50 was not earned by the Debtor and the Debtor should not enjoy the protection of the DIP account to shelter the funds from the Movant.

15. More than 30 days has elapsed since the entry of the Judgment; hence, the Judgment is final and not subject to appeal.

16. That Chicken Out the Door, Inc. assigned the Judgment it obtained as against the Debtor to GUCA Enterprises, LLC (hereinafter GUCA).

17. Movant herein is GUCA Enterprises, LLC, the assignee of the Judgment which was entered against the Debtor.

18. Debtor has refused to return these unearned monies that he continues to retain in the DIP account to GUCA Enterprises, despite demand to do so.

19. Counsel for the Movant, prior to the commencement of the Jury trial in Montgomery County, Maryland, confirmed with Counsel for the Movant that the matter before the Court was based upon a post-Petition contract and the automatic stay was not applicable.

20. That after the Jury entered an award of damages against the Debtor, the Movant learned of various bank accounts being utilized by the Debtor which were not DIP accounts.

21. Movant determined that the Debtor maintained bank accounts with Eagle Bank and TD Bank.

22. TD Bank confirmed that it had funds on deposit.

23. The Debtor, through his Counsel, then filed a Suggestion of Bankruptcy to prevent any release of the funds.

24. That funds are currently being retained by TD Bank in the amount of \$2,813.72.

25. That the Movant is respectfully requesting that this Honorable Court grant Movant Relief from Stay and permit the Movant to either attach and/or to receive the money from Debtor's Bank of Georgetown account to which Debtor has been improperly enriched in the amount of \$31,248.50.

26. That the Bank of Georgetown, based upon the account having been established as a Debtor in possession account, takes the position that the account is a fiduciary account. Movant is unable to obtain the funds improperly deposited into the Bank of Georgetown account by Debtor without an Order permitting same from this Honorable Court.

27. Since the Bank of Georgetown account is a fiduciary account the Debtor should only be permitted to retain funds in the account to which he is entitled. The Judgment entered by the Circuit Court for Montgomery County, Maryland concluded that the Debtor is not entitled to the \$31,248.50 and Movant requests an Order from this Honorable Court enabling the Movant to recover those funds from Debtor.

28. Movant further requests a relief from Stay as to the funds being retained by TD Bank in the amount of \$2,813.72 so as to permit the release of said funds to the Movant herein.

WHEREFORE, the Movant, GUCA Enterprises, LLC, assignee of the Judgment from Chicken Out the Door, Inc., as against the Debtor herein, prays that this Honorable Court:

1. Enter an Order lifting the Automatic Stay with respect to the Debtor's Bank of Georgetown DIP account enabling the Movant to recover the sum of \$31,248.50 consistent with the Judgment entered by the Circuit Court for Montgomery County, Maryland establishing said sum to be money paid Debtor to which he was not entitled;

2. An Order be entered directing the release of \$31,248.50 from the Debtor's Bank of Georgetown Account to the Movant;
3. Enter an Order lifting the Automatic Stay with respect to the Debtor's account with TD Bank enabling the Movant to recover and the bank to release the sum of \$2,813.72 pursuant to the Judgment entered by the Circuit Court for Montgomery County, Maryland;
4. For such other and further relief as the nature of its cause may require.

Respectfully submitted,

Ronald W. Stern

/s/

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Of Counsel:

/s/

Alice Pare

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Attorney for Movant, Guca Enterprises

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

RICHARD J HINDIN
Plaintiff

vs.

Case No. 371097-V

CHICKEN OUT THE DOOR INC
Defendant

NOTICE OF JUDGMENT
(817)

I HEREBY CERTIFY that the following Judgment was entered in the above
entitled case on March 24th, 2014:

JUDGMENT BY VERDICT ENTERED AND RECORDED IN JUDGMENT INDEX IN FAVOR OF
THE DEFENDANT, CHICKEN OUT THE DOOR INC. AND AGAINST THE PLAINTIFF,
RICHARD HINDIN IN THE AMOUNT OF THIRTY-ONE THOUSAND TWO HUNDRED
FORTY-EIGHT DOLLARS AND FIFTY CENTS (\$31,248.50).

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of
this Court.

Spretta E. Knight
Clerk of the Circuit Court for
Montgomery County, Maryland



03/24/2014 10:45:00 Addressee Check Sheet - 371097-V DOCKET 56 Page 01

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MC LEAN VA 22101

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9314 MONTPELIER DRIVE
LAUREL MD 20708

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ALICE PARE, ESQ
19737 EXECUTIVE PARK CIR
GERMANTOWN MD 20874

JUDGMENT

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

RICHARD J. HINDIN

Plaintiff/Counter-Defendant

v.

Civil No. 371097V

CHICKEN OUT THE DOOR, INC.

Defendant/Counter-Plaintiff

VERDICT SHEET

Plaintiff's Complaint

BREACH OF CONTRACT

1. Do you find by a preponderance of the evidence that Chicken Out the Door, Inc. breached the February 16, 2012 Consulting Agreement?

YES ☐

NO ☒

2. If you answered "yes" to Question 1, what amount of damages, if any, do you award to Richard Hindin?

\$ 0

Defendant's Counter-Complaint

BREACH OF CONTRACT

1. Do you find by a preponderance of the evidence that Richard Hindin breached the February 16, 2012 Consulting Agreement?

YES ☒

NO ☐

2. If you answered "yes" to Question 1, what amount of damages, if any, do you award to Chicken Out the Door, Inc.?

\$ 31,248.50

March 14, 14
Date

42
Foreperson Juror Number

FILED

CLERK OF THE CIRCUIT COURT
MONTGOMERY COUNTY, MARYLAND

FILED

MAR 14 2014

Clerk of the Circuit Court
Montgomery County, Md.

Case Information

Court System: **Circuit Court for Montgomery County - Civil System**

Case Number: **371097V** Sub Type: **CONTRACT**

Date Filed: **12/03/2012**

Case Status: **REOPENED**

Plaintiff Information

(Each Alias, Address, and Attorney for the Plaintiff is displayed)

Name: **HINDIN, RICHARD J**

Address: **4615 FOXHALL CRESCENT NW
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Attorney(s) for the Plaintiff

Name: **COOTER, DALE A**

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Name: **NICHOLS, STEPHEN W**

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Phone: **202-537-0700**

Defendant Information

(Each Alias, Address, and Attorney for the Defendant is displayed)

Name: **CHICKEN OUT THE DOOR INC**

Address: **15810 GAITHER DRIVE SUITE 220
GAITHERSBURG MD 20877**

Attorney(s) for the Defendant

Name: **PARE, ALICE**

Address: **19737 EXECUTIVE PARK CIR
GERMANTOWN MD 20874**

Phone: **301-515-1190**

Name: **GUCA ENTERPRISES LLC**

Address: **9314 MONTPELIER DRIVE
LAUREL MD 20708**

Attorney(s) for the Defendant

Name: **PARE, ALICE**
Address: **19737 EXECUTIVE PARK CIR
GERMANTOWN MD 20874**
Phone: **301-515-1190**

Docket Date: **03/14/2014** Docket Number: **52**

Docket Description: **VERDICT**
Docket Type: **Docket** Filed By: **Court**

Docket Text: **VERDICT: IN FAVOR OF THE DEFENDANT/COUNTER-PLAINTIFF CHICKEN OUT
THE DOOR INC. AGAINST THE PLAINTIFF/COUNTER-DEFENDANT RICHARD
HINDIN IN THE AMOUNT OF THIRTY ONE THOUSAND, TWO HUNDRED FORTY
EIGHT DOLLARS AND FIFTY CENTS (\$31,248.50) .**